



Posted: 4/12/99
4:45 p.m.

Order 99-4-10

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 12th day of April, 1999**

Served: April 14, 1999

Agreement adopted by the Tariff Coordi- :
nating Conferences of the International : Docket OST-98-4834
Air Transport Association relating to :
composite cargo resolutions :

ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted by mail vote. 1/

The agreement generally adopts, worldwide, rates published in The Air Cargo Tariff (TACT) as IATA-agreed rates where rates exist in TACT but not in the IATA agreements, and generally amends IATA-agreed rates to the level published in TACT to reflect what is sold in the market. The agreement contains several restrictions: no add-on constructions in TACT would be added to the IATA rates; rates to/from points in the former Soviet Union would be re-calculated if constructed over Moscow and the adoption of TACT rates changed the rates to/from Moscow; rates to/from the United States would not be increased; and new cities or rates would not be added to/from the United States.

As a result of the agreement, rates **from the United States** are unchanged. General commodity rates **to the United States** have been reduced between four to six percent, with larger reductions from Bangladesh (down 33 percent) and Malaysia (down fifteen percent). Specific commodity rates to the United States are basically unchanged, except for general reductions from Nairobi to New York.

Section 41309 of the Code directs us to approve any agreement or modification of an agreement if we find that it will not substantially lessen competition, and is not adverse to the public interest or in violation of the Code. The instant agreement generally reduces rates to the United States, and does not change the

1/ IATA memoranda COMP Cargo Telex Mail Vote 970, filed with the Department December 1, 1998.

conditions of transport. 2/

We will approve the agreement, subject to our usual conditions that all agreed rates and charges represent maximums, with carriers free to implement rates and charges below them. We find that, as previously conditioned, the resolution incorporated in the above docket is not adverse to the public interest, in violation of the Code, or likely to lessen competition substantially, and that it should be approved.

Furthermore, we conclude that the resolution contained in the agreement should be granted immunity from the operation of the antitrust laws to the extent necessary to permit its implementation. In general, it amends existing rates already approved and immunized by the Department. As a result, the agreement does not raise immunity issues not previously considered, and the conferral of immunity upon it is consistent with our policy of conferring immunity on amendments coextensively with the underlying agreements.

Pursuant to the authority duly assigned under the Department's Regulations, 14 CFR 385.13:

1. We do not find that the resolution below, and which has direct application in foreign air transportation as defined by the Code, is adverse to the public interest or in violation of the Code, or likely to lessen competition substantially; provided that (a) notwithstanding any provisions of this resolution or any other resolution, all rates and charges to or from U.S. points established pursuant to such resolutions shall be maximums, and (b) each and every carrier operating pursuant to such resolutions may implement rates and charges below those established by these resolutions;

Docket OST-98-4834

Reso CTC1/3/12/23/31/123 (Mail 970) 010LL

Special Cargo Amending Resolution

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

2/ We reaffirm our previous condition that any carrier may establish through rates based on a combination of local rates over U.S. points (Order 86-9-88.)

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-98-4834, as set forth in finding paragraph 1 above, subject to conditions previously imposed.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-98-4834, as set forth in finding paragraph 1 above, subject to conditions previously imposed.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and shall become the action of the Department of Transportation upon expiration of the above period, unless within such period a petition for review is filed or the Assistant Secretary for Policy and International Affairs gives notice that he will review this order on his own motion.

By:

Paul L. Gretch
Director, Office of International Aviation

(SEAL)